

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

STATE OF ALABAMA,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 2:15cv853-SRW
)	
\$504,135 IN U.S. CURRENCY, et al.,)	
)	
Defendants.)	

ORDER and RECOMMENDATION OF THE MAGISTRATE JUDGE

This matter is before the court on a “Joint Stipulation of Dismissal” filed by all parties except defendant Lloyd Foshall McClain, who has not appeared in this action. (Doc. 8). The parties “move the Court to dismiss this case with prejudice” and to tax costs as paid. (*Id.* at 1). Accordingly, because not all parties consent to the dismissal of this action in accordance with Federal Rule of Civil Procedure 41(a)(1)(A)(ii), it is

ORDERED that the “Joint Stipulation of Dismissal” is hereby **CONSTRUED** as plaintiff’s motion to dismiss this action with prejudice filed pursuant to Federal Rule of Civil Procedure 41(a)(2), which provides that “an action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper.”

The undersigned Magistrate Judge does not have the consent of all parties to exercise final dispositive jurisdiction over this case. *See* 28 U.S.C. 636(b), (c); Fed. R. Civ. P. 73. Thus, the court lacks the authority to grant the moving parties’ requested relief – i.e., to dismiss this action with prejudice. In light of the foregoing, it is the

RECOMMENDATION of the Magistrate Judge that the plaintiffs' motion to dismiss with prejudice be **GRANTED**, that this cause be dismissed with prejudice, and that costs be taxed as paid.

It is further

ORDERED that the plaintiff shall serve Lloyd Foshall McClain with a copy of this Order and Recommendation and shall file a notice of service into the record on or before **August 4, 2017**.

The parties may file any objections to this Recommendation on or before **August 14, 2017**. Any objections filed must specifically identify the factual findings and legal conclusions in the Magistrate Judge's Recommendation to which the parties object. Frivolous, conclusive or general objections will not be considered by the District Court.

Failure to file written objections to the proposed findings and recommendations in the Magistrate Judge's report shall bar a party from a *de novo* determination by the District Court of factual findings and legal issues covered in the report and shall "waive the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions" except upon grounds of plain error if necessary in the interests of justice. 11th Cir. R. 3-1; *see Resolution Trust Co. v. Hallmark Builders, Inc.*, 996 F.2d 1144, 1149 (11th Cir. 1993); *Henley v. Johnson*, 885 F.2d 790, 794 (11th Cir. 1989).

DONE, on this the 31st day of July, 2017.

/s/ Susan Russ Walker
Susan Russ Walker
United States Magistrate Judge